

**DEPARTMENT OF FOOD AND AGRICULTURE
ANIMAL HEALTH AND FOOD SAFETY SERVICES
PROPOSED REGULATIONS - INFORMAL HEARINGS**

The Department of Food and Agriculture, Animal Health and Food Safety Services, proposes to amend sections 1310, 1310.1, 1310.2 and 1310.3, and adopt section 1310.4, of Article 1, Chapter 9, Division 2, of Title 3 of the California Code of Regulations, to read as follows:

Section 1310. Scope of Coverage.

(a) Any person, or his or her duly authorized representative, may contest a notice of adverse determination and request an informal hearing as outlined in this article.

(b) The informal hearing proceedings outlined in this article pertain to a violation of any of the following sections of the Food and Agricultural Code and any regulations adopted into Title 3 of the California Code of Regulations, to implement, interpret, or make specific the following Code sections:

(1) Importation requirements for horses or other Equidae pursuant to section 9641.5.

(2) Brucellosis vaccination requirements pursuant to sections 10341, 10342, and Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5.

(3) ~~Importation r~~Requirements for cattle movement permits pursuant to section 10610.

(4) ~~Importation r~~Requirements for swine movement permits pursuant to section 10721.

~~(5) Approved processing or disposal of garbage aboard any vessel or aircraft in the state pursuant to sections 16101, 16151, 16152, 16153 and 16154.~~

(5) Proceedings for the imposition of civil penalties relating to the importation of cattle, horses or other Equidae, swine, and animals and animal products that pose or may pose significant threats to California agriculture under Chapter 1 (commencing with section 9101), Chapter 1.5 (commencing with section 9210), Chapter 2 sections 9301 through 9352, Chapter 3 (commencing with section 9641.5) of Part 1; Chapter 2 (commencing with section 9901), Chapter 3 (commencing with section 10301) of Part 2; Chapter 1, section 10701 of Part 3; and Chapter 1 (commencing with section 11201) of Part 4, Division 5.

~~(6) Requirements for animals at large pursuant to section 16441 including but not limited to, pedigree and proof of ownership requirements pursuant to sections 16501, 16521, 16524, and 16525. Proceedings for the imposition of civil penalties for violations of Division 9, Part 1 (commencing with section 16301) pertaining to animals at large.~~

~~(7) Requirements for the transportation of animals pursuant to sections 16901, 16902, 16903, 16905, and 16908.~~

~~(8) (7) Requirements~~ Determination of ownership for estrays pursuant to sections 17042, 17043, 17045, 17061, 17062, 17068, 17092, 17096, 17121, and 17122.

~~(9)~~ (8) Unlawful marking and branding requirements pursuant to sections 17551, 17552, and 17553.

~~(10)~~ (9) Requirements for processing inspectors pursuant to sections 18982, 18983, 18991, 19001, and 19002.

(10) Appeals submitted in accordance with the provisions of sections 19302, 19305.5, and 19447 for licensed renderers, collection centers, custom livestock slaughterhouses, poultry plants, livestock meat inspectors, poultry meat inspectors, and processing inspectors.

(11) Requirements pertaining to transporters of inedible kitchen grease pursuant to sections 19310, 19310.5, 19310.7, 19311, 19312, 19314, 19315, 19316, and 19317.

~~(12) Unrecorded, forfeited, or canceled brands requirements pursuant to section 20222~~
Proceedings for the imposition of civil penalties for violations of Division 10 (commencing with section 20151) relating to cattle brand registration, inspection and enforcement.

~~(13) Requirements for enforcement of brand registration pursuant to sections 20604, 20605, 20606, and 20607.~~

~~(14) Requirements for cattle record brands pursuant to sections 20904 and 20906.~~

~~(15) Requirements for the inspection of cattle pursuant to sections 21051.5, 21052, 21058, 21060.7, 21062, 21064, 21066, 21081, 21082, 21172, 21173, 21174, 21175, 21204, 21205, 21208, 21231, 21232, 21236, 21237, 21238, 21281, 21281.5, 21282, 21283, 21283.5, 21285, 21288, and 21288.5.~~

~~(16) Requirements for the inspection of hides and carcasses pursuant to sections 21455, 21456, 21457, 21458, and 21459.~~

~~(17) Requirements for the sale and gift of cattle and their carcasses and hides pursuant to sections 21702, 21702.1, 21703, 21705, 21707, 21708, 21709 and 21710.~~

~~(18) Requirements relating to the slaughter of cattle pursuant to section 22001, 22006, 22008, 22009 and 22010.~~

~~(19)~~ (13) Requirements for brands and brand records pursuant to section 23251
Proceedings for the imposition of civil penalties for violations of Division 11 (commencing with section 23001) relating to the enforcement of the requirements for horses, mules, burros, sheep, and swine, and sections 24007, 24012, and 24015 relating to the suspension of horse owners, trainers, and event managers.

~~(20) Requirements for the sale or gift of an animal hide or carcass pursuant to section 23801.~~

~~(21) Requirements for the transportation of sheep pursuant to section 23981.~~

~~(22) Control of performance and disposition enhancing medications for horses in public horse shows, events, competitions, or sales pursuant to Chapter 8 (commencing with section 24000), Division 11.~~

~~(23)~~ (14) Inspection and sampling of milk, milk products, and products resembling milk pursuant to Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15.

~~(24)~~ (15) Testing of milk and milk products for the presence of drug residues pursuant to Article 4 (commencing with section 32761), Chapter 2, Part 1, Division 15.

(16) Proceedings relating to the cost of dairy farm inspection services as set forth in Division 15, Part 1, Chapter 4, Article 8 (commencing with section 33251) and Article 9 (commencing with section 33291).

(17) Proceedings relating to violations of Division 15, Part 1, Chapter 10 (commencing with section 34501) pertaining to milk and milk products container brand registration.

(18) Proceedings relating to the usages of milk, the composition and labeling of dairy products, dairy beverages, products resembling milk products, and the advertisement of such products, including the imposition of civil penalties as set forth in Division 15, Part 2 (commencing with section 35601) and Part 3 (commencing with section 36601).

(19) Licensing and penalty proceedings for violations of Division 12, Part 4 (commencing with section 27501) pertaining to eggs and egg products.

(20) Proceedings relating to the imposition of any fine or penalty, or any license, registration, permit or certificate issued by the Department in absence of any procedure as specified in statute or regulation.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Sections 9166, 9641.5, 10341, 10342, 10610, 10721, ~~46101, 46151, 46152, 46153, 46154, 46441, 46501, 46521, 46524, 46525, 46901, 46902, 46903, 46905, 46908, 17042, 17043, 17045, 17061, 17062, 17068, 17092, 17096, 17121, 17122, 17551, 17552, 17553, 17951, 18982, 18983, 18991, 19001, 19002, 19302, 19305.5, 19310, 19310.5, 19310.7, 19311, 19312, 19313, 19313.1, 19313.5, 19314, 19315, 19316, 19317, and 19447~~ ~~20222, 20251, 20604, 20605, 20606, 20607, 20904, 20906, 21051.5, 21052, 21058, 21060.7, 21062, 21064, 21066, 21081, 21082, 21172, 21173, 21174, 21175, 21204, 21205, 21208, 21231, 21232, 21236, 21237, 21238, 21281, 21281.5, 21282, 21283, 21283.5, 21285, 21288, 21288.5, 21455, 21456, 21457, 21458, 21459, 21702, 21702.1, 21703, 21705, 21707, 21708, 21709, 21710, 22001, 22006, 22008, 22009, 22010, 23251, 23801, 23981, and 24007~~, Food and Agricultural Code; and Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5, Food and Agricultural Code; Chapter 1 (commencing with section 9101), Chapter 1.5 (commencing with section 9210), Chapter 2 sections

9301 through 9352, Chapter 3 (commencing with section 9641.5) of Part 1; Chapter 2 (commencing with section 9901), Chapter 3 (commencing with section 10301) of Part 2; Chapter 1, section 10701 of Part 3, and Chapter 1 (commencing with section 11201) of Part 4, Division 5, Food and Agricultural Code; Chapter 8 (commencing with section 24000), Division 11, Food and Agricultural Code; Part 1 (commencing with section 16301), Division 9, Food and Agricultural Code; Division 10 (commencing with section 20151), Food and Agricultural Code; Division 11 (commencing with section 23001), Food and Agricultural Code; Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15, Food and Agricultural Code; and Article 4 (commencing with section 32761), Chapter 2, Part 1, Division 15, Food and Agricultural Code; Article 8 (commencing with section 33251) and Article 9 (commencing with section 33291) of Chapter 4, Part 1, Division 15, Food and Agricultural Code; Chapter 10 (commencing with section 34501) of Part 1, Division 15, Food and Agricultural Code; Part 2 (commencing with section 35601) and Part 3 (commencing with section 36601) of Division 15, Food and Agricultural Code.

Section 1310.1. Filing Deadlines and Procedures.

(a) The respondent may contest a notice of adverse determination for any violation specified in section 1310 and may request an informal hearing by written correspondence to the California Department of Food and Agriculture, Legal Office, 1220 "N" Street, Suite 400, Sacramento, California 95814.

(b) The respondent must submit a request for an informal hearing to the Department's Legal Office in writing, within ~~30~~ 20 days from the date of the notice of adverse determination. ~~If the notice of adverse determination requires the holding of animals or animal products at a site specified, the respondent must submit the request by mail, facsimile, or by telephone within 72 hours of the date of the notice of adverse determination.~~

(1) Subsection (a) above shall not apply to violations relating to fertilizing materials for which administrative penalties are levied pursuant to Food and Agricultural Code section 14651.5. Food and Agricultural Code section 14651.5(c) requires that requests for hearings be filed within 30 days after the issuance of a notice of penalty.

(c) Any requests for an informal hearing shall include a copy of the notice of adverse determination and shall state the grounds for the appeal. The scope of the hearing shall be limited to only those causes, claims, and defenses specifically stated in the request for hearing.

~~(e)~~ (d) Unless a different proceeding is required by statute, the respondent may request a formal hearing in lieu of an informal one. The respondent must do so within the filing deadlines for

requesting an informal hearing set forth in subsection (b). Any requests for a formal hearing must clearly state that a formal hearing is being requested ~~be accompanied by a written statement in support of it. The hearing officer shall determine whether to proceed with an informal hearing or whether a formal hearing or other appropriate administrative proceeding may be required by statute pursuant to Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code. If a formal hearing is requested, T~~the respondent will be expected to waive the time constraints ~~timing provisions set forth in~~ of this article on the record if ~~any administrative proceeding other than an informal hearing is requested by respondent or required by the Department.~~

(d) ~~(e)~~ Failure to ~~present~~ submit a timely request for a hearing constitutes a waiver of the respondent's right to contest the notice of an adverse determination. Untimely requests for a hearing shall be denied by the Department.

~~(e) If the notice of adverse determination places a hold on a product or animal, or requires a person to cease operations, the notice of adverse determination shall remain in effect pending the outcome of the informal hearing.~~

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

Section 1310.2. Hearing Schedule and Notification.

(a) Supplemental to any procedures set forth in Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code, the Department shall schedule an informal hearing within ~~30~~ 45 days from the receipt of the request from the respondent. ~~If the notice of adverse determination requires the holding of animals or animal products at a site specified, the Department shall schedule the hearing within 72 hours of the receipt of the request for an informal hearing.~~

(b) Formal hearings shall be scheduled by the Department consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code, and any applicable regulations enacted pursuant to these provisions.

(c) At least 10 days prior to the hearing, ~~T~~the Department shall provide a notice of the informal hearing to the respondent containing all of the following information:

- (1) Date, location, and time of the informal hearing;
- (2) Departmental contact information including applicable telephone and facsimile numbers;
- (3) Subject matter of the adverse determination;~~and,~~

~~(4) Any other information or documentation relative to the adverse determination.~~

(d) The notice of hearing shall be sent by certified mail to one of the following:

(1) The address of the person charged, as provided by any license or registration issued by the Department.

(2) The address of an agent for service of process for the person charged, as filed with the Secretary of State.

(3) If an address described in subsections (d)(1) or (d)(2) are not available, the last known address of the person charged.

(e) A notice that is sent to any of the addresses described in subsection (d) shall be considered received, even if delivery is refused or if the notice is not accepted at that address.

(f) Any documents to be considered by the hearing officer must be submitted to the Hearing Office and received at least three business days prior to the hearing

(g) For licensed renderers, in accordance with the provisions of Food and Agricultural Code sections 19302, 19305.5, and 19447, this section shall only apply if oral argument is granted.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

Section 1310.3. Conduct of Hearings.

(a) If a formal hearing is requested by the respondent, or otherwise required by statute or regulation, it shall be conducted consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code.

(b) Informal hearings shall be conducted pursuant to Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2 of the Government Code and shall be conducted as follows:

(1) The informal hearing shall be presided over and conducted by a hearing officer designated by the Department.

(2) The standard of proof to be applied by the hearing officer shall be preponderance of the evidence, unless statutes or regulations applicable to the determination provide a higher standard.

(3) Hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30.

(4) Hearings may be tape recorded with either a transcript of the recording, or a copy of the recording, provided to any interested party upon request.

~~(4)~~ (5) Subject to the provisions of Government Code section 11425.50, the decision of the hearing officer shall be in writing with a brief statement of the conclusion and findings to support the conclusion. ~~The decision may be handwritten.~~

~~(5)~~ (6) The decision shall be issued within 44 30 days after the conclusion of the hearing ~~and may be issued orally at the conclusion of the hearing subject to written confirmation.~~

(A) Subsection (b)(6) above shall not apply to an appeal submitted in accordance with the provisions of Food and Agricultural Code sections 19302, 19305.5, and 19447, which require the issuance of a written decision within 45 days of the date of appeal, or within 15 days of the date of oral argument.

~~(6)~~ (7) The decision shall be served on the respondent either by personal service, ~~or, if available, by facsimile transmission~~ a method requested by the respondent.

~~(7)~~ (8) The hearing officer's decision shall be effective immediately upon ~~first articulation under subsection (b)(4) or (b)(5) above, and shall be final~~ service on the respondent.

~~(8)~~ (9) The respondent may appeal the hearing officer's decision by filing a petition for a writ of administrative mandamus in accordance with the provisions of the Code of Civil Procedure ~~subject to the statutes relating to the Department~~ section 1094.5.

~~(9)~~ (10) The Department shall provide a copy of the decision to any interested party upon written request.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

Section 1310.4. Holding of Animals or Animal Products: Filing Deadlines.

(a) Informal hearings involving the holding of animals or animal products shall be conducted in accordance with the provisions and procedures set forth in this article.

(b) If the notice of adverse determination requires the holding of animals or animal products at a site specified, the respondent must submit the request for an informal hearing to the Department by mail, facsimile, or by telephone within 72 hours of the date of the notice of adverse determination.

(c) If the notice of adverse determination places a hold on a product or animal, or requires a person to cease operations, the notice of adverse determination shall remain in effect pending the outcome of the informal hearing.

(d) Hearings conducted under this section shall be scheduled within 72 hours after the Department receives the request for an informal hearing.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

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